

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and)
MONSANTO TECHNOLOGY LLC,)
)
Plaintiffs,)
)
vs.)
)
E.I. DUPONT DE NEMOURS AND) Case No. 4:09-cv-00686-ERW
COMPANY and)
PIONEER HI-BRED INTERNATIONAL,)
INC.,)
)
Defendants.)

DECLARATION OF STEPHEN R. SMEREK

I, Stephen R. Smerek, hereby declare:

1. I am a partner with the law firm of Winston & Strawn LLP, counsel of record for Monsanto Co. and Monsanto Technology LLC (together “Monsanto”) and I make this Declaration in further support of Monsanto’s Motion for Sanctions for Discovery Misconduct. I have personal knowledge of the following facts, and if called as a witness, could and would competently and truthfully testify thereto.

2. Attached as **Exhibit A** is a true and correct copy of the deposition transcript of Dr. Paul Stephens. This copy of the transcript has been highlighted to reflect objections and commentary by defense counsel. A complete copy of the video of Dr. Stephens deposition is also being filed on DVD with the Clerk as **Exhibit A-1**, as is reflected by the Notice of Manual Filing submitted herewith.

3. I have reviewed and analyzed the transcript prepared in connection with the deposition of Dr. Stephens. Defense counsel’s objections and commentary occupy in excess of 1,530 lines of testimony. This equates to just over 61 pages, or approximately 22% of the roughly 7,120 total lines of testimony in the transcript (excluding lines reflecting breaks).

4. Dr. Stephens's testimony occupies roughly 1,850 lines of testimony. This equates to approximately 74 pages, or 26% of the roughly 7,120 total lines of testimony in the transcript.

5. At the first break of the deposition, defense counsel's objections and commentary occupied in excess of 330 lines of testimony, which equates to over 13 pages, or more than 30% of the roughly 1,090 lines of testimony up to that point.

6. At the first break of the deposition, Dr. Stephens's testimony occupied roughly 270 lines of testimony, which equates to less than 11 pages, or approximately 25% of the roughly 1,090 lines of testimony up to that point.

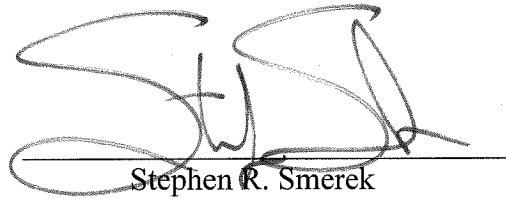
7. The deposition transcript consists of 291 pages on the record. Of those 291 pages, nearly 250 pages (85%) include objections or commentary by defense counsel.

8. Attached as **Exhibit B** is a true and correct copy of excerpts of the deposition transcript of Dr. John F. Soper conducted on December 22, 2010.

9. Attached as **Exhibit C** is a true and correct copy of excerpts of the deposition transcript of Dr. John Bedbrook conducted on December 8, 2010.

I declare under penalty of perjury that the foregoing is true and correct. If any of the above statements made by me are willfully false, I understand that I may be subject to punishment.

Executed this 12th day of January, 2011.



Stephen R. Smerek